

**MINUTES OF THE PUBLIC MEETING OF THE
ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY
May 8, 2004**

BOARD MEMBERS PRESENT: President Martin Reiss, D.O.; Stanley Brysacz, Jr., D.O.; Murray Cohen, D.O.; David Steinway, D.O.; Charlie Hendrix; F. P. Wedel, D.O.

BOARD MEMBERS ABSENT: Vice-President Stanley Grossman

STAFF / OTHERS PRESENT: Elaine LeTarte, Executive Director
Barbara Meyers, Deputy Director
Barbara Prah-Wix, D.O., Medical Consultant
Blair Driggs, Assistant Attorney General
Carole A. Whipple, Griffin & Associates (Court Reporter)

I. CALL TO ORDER

The Board President, Dr. Martin Reiss, called the meeting to order at 8:10 a.m.

II. ROLL CALL

The Executive Director took the roll. The six Board Members listed above were present, establishing quorum for the meeting. The staff and others listed above were also present.

The Executive Director reviewed the changes made between the draft agenda distributed to the Board, and the final agenda.

III. PRESIDENT'S REPORT

Dr. Reiss welcomed the 3rd year medical students from Arizona College of Osteopathic Medicine at Midwestern University and Kirksville College of Osteopathic Medicine at A.T. Stills University. After the conclusion of the Investigative and Administrative Hearings and some of the Case Reviews, the Board held a question and answer session with the medical students. The students were dismissed at approximately 3:05 p.m.

IV. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

March 27, 2004 Board Meeting
Dr. Steinway moved to approve the minutes as presented. Dr. Cohen seconded. The motion passed, 6-0.

Dr. Steinway noted that a number of the cases before the Board in recent months presented questions of doctors meeting a minimum standard for histories and physical

examinations. Dr. Reiss directed that Dr. Prah, the Board's Medical Consultant, be part of a committee to research and recommend a minimum standard.

V. CALL TO THE PUBLIC

The President asked members of the public to speak when the agenda item of interest to the person was called.

VI. REVIEW, DISCUSSION, AND ACTION ON CASES MOVED TO FORMAL ADMINISTRATIVE HEARING, PURSUANT TO A.R.S. § 32-1855 (E).

A. Brian Finkel, D.O. Case No. 3287 License No. 1830
Mr. Blair Driggs, Asst. Attorney General representing the State, presented to the Board a proposed agreement for the surrender of Dr. Finkel's license. Neither Dr. Finkel nor his attorney, Mr. Lawrence Rosenfeld, were present. However, both had signed the proposed agreement. Dr. Brysacz moved to accept the Consent Agreement as proposed. Ms. Hendrix seconded. A roll call vote was taken, and all present voted in favor, 6-0.

B. Robert Kuffa, D.O. Case No. 3110 License No. 3550
Dr. Reiss opened the hearing on the record. Dr. Kuffa was not present, nor was he represented by an attorney. Mr. Blair Driggs, Asst. Attorney General representing the State, presented to the Board a proposed agreement to resolve the case; that in light of Dr. Kuffa not renewing his AZ license, the Board dismissed the case without prejudice. After discussion, Dr. Steinway so moved. Dr. Wedel seconded. The motion passed, 6-0.

C. Randy E. Collins, D.O. Case No. 3325 License No. 1546
Dr. Collins' attorney, Mr. Robert Bohm, was present and asked the Board to continue the hearing until Dr. Collins is available to attend. Mr. Driggs said the State had no objection to the continuance. Dr. Steinway moved to continue the hearing. Dr. Cohen seconded. The motion passed, 6-0.

D. David Nyman, D.O. Case No. 3324 License No. 3823
Dr. Reiss opened the hearing on the record. Dr. Nyman was not present, nor was he represented by an attorney. At the conclusion of their deliberations on the case, Dr. Brysacz moved to accept Findings of Fact as proposed in the Complaint and Notice of Hearing. Dr. Cohen seconded. The motion passed, 6-0. Dr. Steinway moved to accept as Conclusions of Law that Dr. Nyman had violated A.R.S. § 32-1854 (23), (26), and (41). These were read into the record. Dr. Wedel seconded. The motion passed, 6-0. Dr. Steinway moved that, based on the above, the Board revoke Dr. Nyman's license. Dr. Wedel seconded. A roll call vote was taken, and the motion passed, 6-0.

VII. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E)

A. Harry Watters, D.O. Case No. 3128 License No. 1927

Dr. Watters was present, and was sworn in by the court reporter. The Medical Consultant read the summary into the record. Dr. Watters discussed the case with the Board, and answered their questions. Dr. Steinway moved that the case be dismissed, on the grounds that Dr. Watters' care did not fall below the standard. Dr. Brysacz seconded. The motion passed, 6-0.

B. Michael Ginder, D.O. Case No. 3033 License No. 0959
Dr. Ginder was present and represented by Conrad Hernandez and Sandra Portney. Dr. Ginder was sworn in by the court reporter. The Medical Consultant read the summary into the record, and later read into the record a report on reviews of Dr. Ginder's charts. Dr. Ginder discussed with the Board their concerns over the history and physicals he does on patients. Dr. Steinway moved that the Board issue a Decree of Censure, based on finding that Dr. Ginder's pre-surgical history and physicals fell below the standard of care in that they were not done prior to the date of surgery, and did not include vital signs or medications that patient was taking, a violation of A.R.S. § 32-1854(6). Ms. Hendrix seconded. The Board noted that Dr. Ginder has already been issued a Letter of Concern about his history and physical.

Dr. Ginder's attorney noted that the Board staff had not provided him a copy of the Letter of Concern when he had asked for copies of all related materials.

Ms. Hendrix moved that the Board go into Executive Session to obtain legal advice. Dr. Reiss seconded. The motion carried, and the Board went into Executive Session at 9:40 a.m. The Board returned to open session at 9:50 a.m.

Dr. Steinway withdrew the motion to issue a Decree of Censure. Dr. Steinway moved to continue the investigative hearing until the next meeting, to allow Dr. Ginder's attorneys time to consider the Letter of Concern. Ms. Hendrix seconded. The motion passed, 6-0.

C. Thomas Wood, D.O. Case No. 3153 License No. 2251
Dr. Wood was present, and represented by Mr. Robert Bohm. Dr. Wood was sworn in by the court reporter. The Medical Consultant read the summary into the record. Dr. Wood discussed the case with the Board, and answered their questions. The complainant, patient C.V. was present and sworn in by the court reporter. C.V. discussed the case with the Board and answered their questions. The Board then discussed the case again with Dr. Wood. Ms. Hendrix moved to dismiss the case. Dr. Steinway seconded. A roll call vote was taken, and the motion passed, 6-0.

D. Mark Goldstein, D.O. Case No. 3156 License No. 1572
Dr. Reiss recused himself from this case; in the absence of Vice President, Dr. Cohen presided. Dr. Goldstein was present, and was sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Goldstein discussed the case with the Board, and answered their questions. Dr. Steinway moved to dismiss the case. Dr. Brysacz seconded. The motion passed, 5-0.

E. Robert Cohen, D.O. Case No. 3190 License No. 1918
Dr. Robert Cohen was present, and sworn in by the court reporter. The Medical Consultant read the case summary into the record. Dr. Robert Cohen discussed the case with the Board, and

answered their questions. Dr. Murray Cohen moved to dismiss the case. Dr. Steinway seconded. The motion passed, 6-0.

F. Charles Lindsay, D.O. Case No. 3144 License No. 0793
Dr. Lindsay was present, and sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Lindsay discussed the case with the Board, and answered their questions.

Dr. Steinway moved that the Board go into Executive Session to obtain legal advice. Ms. Hendrix seconded. The motion passed, and the Board went into Executive Session at 11:40 a.m. The Board returned to open session at 12:16 p.m.

The Board discussed whether to investigate the matter further. Dr. Wedel moved that the case be dismissed. Dr. Cohen seconded. A roll call vote was taken, and the motion failed for lack of a majority, 3-3. Dr. Wedel, Dr. Cohen, and Dr. Brysacz voted in favor of the motion. Dr. Steinway, Ms. Hendrix, and Dr. Reiss voted against the motion.

Dr. Steinway moved that the case be continued until interviews with Dr. Lindsay's staff are done, about the incident in this case and how problems of this type might arise and are handled in the office. Ms. Hendrix seconded. The motion passed, 6-0.

G. Corey Gilliland, D.O. Case No. 3296 License No. 3935
Dr. Gilliland's attorney had requested and been granted a first continuance of this case.

H. Ethan Kennedy, D.O. Case No. 3106 License No. 3123
Dr. Kennedy was present, and represented by Mr. Daniel Janstch. Dr. Kennedy was sworn in by the court reporter. Dr. Kennedy discussed the case with the Board, and answered their questions. The Deputy Director informed the Board that the complainant, H.V., had contacted staff that he was not able to attend but agreed that the case proceed. Dr. Wedel moved that the case be dismissed. Dr. Brysacz seconded. The motion passed, 6-0.

I. Ethan Kennedy, D.O. Case No. 3148 License No. 3123
Dr. Kennedy was present, and represented by Mr. Daniel Janstch. Dr. Kennedy was sworn in by the court reporter. Dr. Kennedy discussed the case with the Board, and answered their questions. The complainant, patient R.G., was present and sworn in by the court reporter. Patient R.G. discussed the case with the Board, and answered their questions. Dr. Steinway moved that the case be dismissed. Dr. Wedel seconded.

Dr. Cohen moved that the Board go into Executive Session to obtain legal advice. Dr. Steinway seconded. The motion passed, and the Board went into Executive Session at 12:20 p.m. The Board returned to open session at 12:34 p.m.

The question was called, and a roll call vote was taken. The motion passed, 6-0.

VIII. REVIEW, CONSIDERATION AND ACTION ON COMPLIANCE WITH TERMS OF BOARD ORDERS AND REQUESTS TO MODIFY OR TERMINATE ORDERS, PURSUANT TO A.R.S. 32-1855.

A. Jack Bouchier, D.O.

Dr. Bouchier was present and discussed with the Board his request for early termination of his probation ordered in case no. 2774. Dr. Wedel moved that the probation be terminated. Dr. Brysacz seconded. The motion passed, 5-1.

IX. REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS FOR LICENSURE PURSUANT TO A.R.S. §32-1822 (B): PERMITS PURSUANT TO § A.R.S. 32-1829; AND RENEWALS OF LICENSES PURSUANT TO A.R.S. §32-1825 (C-D) AND A.A.C. R4-22-109.

A. Brandon Covert, D.O.

The Executive Director presented Dr. Covert's decision not to send the evaluation report the Board had requested, and Dr. Covert's question whether there was any alternative to sending that report. The Board directed staff to inform Dr. Covert that the alternative was to withdraw his application for licensure.

B. Brian L. Seyler, D.O.

The Executive Director informed the Board that Dr. Seyler had planned to be at the meeting, but had transportation problems. The Board agreed to table the matter until Dr. Seyler appeared before them.

C. Thomas Mirzai, D.O.

Staff informed the Board this matter was withdrawn from the agenda, because Dr. Mirzai had previously satisfied the matter.

X. REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT

A. Cynthia Porterfield, D.O. Case No. 3025 License No. 3049

Based on the case materials presented and the recommendations of the three reviewers, Dr. Cohen moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

B. Richard Carnicky, D.O. Case No. 3115 License No. 0507

Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Cohen seconded. The motion passed, 6-0.

C. P. Gregory Foutch, D.O. Case No. 3140 License No. 2305

Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

D. Robert Biedermann, D.O. Case No. 3185 License No. 3064

Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

E. Laura L'Heureux, D.O. Case No. 3208 License No. 3198
Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

F. Leslie Edison, D.O. Case No. 3172M License No. 2491
Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

G. Merlyn Smith, D.O. Case No. 3168 License No. 2010
Based on the case materials presented and the recommendations of the three reviewers, Dr. Cohen moved that the Board dismiss this case. Dr. Wedel seconded. The motion passed, 6-0. Dr. Smith was present, but the Board had no questions.

H. John Bamberl, D.O. Case No. 3203 License No. 1021
Based on the case materials presented and the recommendations of the three reviewers, Dr. Wedel moved that the Board dismiss the case. Dr. Steinway seconded. The motion passed, 6-0.

I. Alan Barnett, D.O. Case No. 3188 License No. 2009
Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

J. R. L. Goedecke, D.O. Case No. 3260 License No. 0643
Based on the case materials presented and the recommendations of the three reviewers, Dr. Wedel moved that the Board dismiss the case. Dr. Brysacz seconded. The motion passed, 6-0.

K. Suzanne Bennett, D.O. Case No. 3227 License No. 3258
Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

L. Gary Erbstoesser, D.O. Case No. 3230 License No. 2751
The complainant, patient C.S., was present, and discussed the case with the Board. Based on that discussion, the case materials presented, and the recommendations of the three reviewers, Ms. Hendrix moved to dismiss the case. Dr. Cohen seconded. The motion passed, 6-0.

M. Robert Casey, D.O. Case No. 3210 License No. 1955
Based on the case materials presented and the recommendations of the three reviewers, Dr. Wedel moved that the Board dismiss the case. Dr. Steinway seconded. The motion passed, 6-0.

Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Dr. Wedel seconded. The motion passed, 6-0.

O. Stanley Brysacz Jr. D.O. Case No. 3061M License No. 1207

Dr. Brysacz recused himself from this case. Based on the case materials presented, including the review by a Board certified cardiologist from outside Arizona, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

P. Brendon Labban, D.O. Case No. 3221 License No. 2717
Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Dr. Wedel seconded. The motion passed, 6-0.

Q. Kenneth Young, D.O. Case No. 3145 License No. 2930
Based on the case materials presented and the recommendations of the three reviewers, Dr. Cohen moved that the Board conduct an Investigative Hearing on this case. Dr. Steinway seconded. The motion passed, 6-0.

R. Robert Marouk, D.O. Case No. 3200 License No. 3583
Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0. The Board noted that Dr. Marouk had been present earlier, but left prior to the case being called.

S. Joseph Janzer, D.O. Case No. 3237 License No. 3702
Based on the case materials presented and the recommendations of the three reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Dr. Wedel seconded. The motion passed, 6-0.

T. Sanford Moretsky, D.O. Case No. 2811 License No. 1486
Based on the case materials presented, including a review by a Board certified ophthalmologist, and the recommendations of the three reviewers, Dr. Wedel moved that the Board dismiss the case. Dr. Steinway seconded. The motion passed, 6-0.

U. Sanford Moretsky, D.O. Case No. 3119 License No. 1486
Based on the case materials presented, including a review by a Board certified ophthalmologist, and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

V. Michael Dubets, D.O. Case No. 3343 License No. 2589
Dr. Steinway moved to continue this case. Dr. Wedel seconded. The motion passed, 6-0.

W. Lawrence Liszewski, D.O. Case No. 3100 License No. 3351
Based on the case materials presented, including additional information the Board staff gathered after this case was tabled at the last meeting, and the recommendations of the three reviewers, Dr. Steinway moved that the Board dismiss the case. Dr. Wedel seconded. The motion passed, 6-0.

XI. REVIEW, DISCUSSION, AND ACTION ON PROPOSED LEGISLATION FOR UPCOMING SESSION, PURSUANT TO ARS § 32-1803(B)(13).

The Executive Director informed the Board that Governor Napolitano had signed HB2344, amending the Board's statutes. The amendments will go into effect 90 days after the legislature adjourns *sine die*. Staff will publish and distribute to the profession the amendments and their impact.

XII. REVIEW, DISCUSSION, AND ACTION ON RULEMAKING, PURSUANT TO ARS § 32-1803(C)(1) AND (A)(10), AND SUBSTANTIVE POLICY STATEMENTS, PURSUANT TO ARS § 41-1091

A. Packet FY02-01: Medical Assistants and miscellaneous changes
The package for the rules is being prepared for consideration at the June meeting of the Governor's Regulatory Review Council.

B. Packet FY04-01: CME requirement
The Board clarified that their intent is that the rules be changed, to require 8 hours of Category 1-A continuing medical education and 12 hours of either Category 1 or 1-A each year.

C. General review of rules and proposed rules
The Executive Director did not present this item.

XIII. REVIEW, CONSIDERATION, AND ACTION ON EXECUTIVE DIRECTOR'S REPORT.

A. Performance Measures Report
The Executive Director pointed out the gains made over the past year in the number of complaints resolved and the time it takes to do so.

B. Financial Report
The Executive Director pointed out that the Board had sufficient funds and appropriation with which to finish the fiscal year. The Executive Director noted that renewal revenue was below projections, but not to an extent that it impacted projected expenditures in FY05. This summer, in preparing the FY06 and 07 budget request and strategic plan, the staff will research how the anticipated retirement of the baby boomer generation will impact the number of osteopathic physicians in Arizona.

C. List of doctors whose licenses expired May 3, 2004
The staff provided the Board with a list of those doctors who did not renew and whose licenses lapsed on May 3, 2004.

D. Status of pending litigation against the Board
The Executive Director reviewed the status of the two suits pending against the Board: CV2002-02556 (Kalmonsohn vs. Finkel, State of AZ, et al) and LC2003-000983-001DT (Taylor appeal)

XIV. MISCELLANEOUS DISCUSSIONS / DECISIONS

A. Legal issues impacting conduct of Board meetings: update
This discussion was postponed.

B. Board member running for public office
Ms. Hendrix asked that the Asst. Attorney General prepare a letter explaining whether the Board's statutes raise any issues with her being a candidate or campaign manager for a candidate in the elections to the Maricopa County Hospital Board. Dr. Brysacz moved that the Asst. Attorney General be asked to prepare the letter. Dr. Steinway seconded. The motion passed, 6-0.

C. Actions regarding late and incomplete renewals
The Executive Director explained that changes in way the American Osteopathic Association, the Arizona Osteopathic Medical Association documented continuing medical education hours, in the hours available at the spring AOMA conference, and changes in how the Board asked for documentation this year had resulted in extenuating circumstances surrounding the decision whether applications had been made by the deadline.

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| R.L. Goedecke, D.O. | Jerry Sowers, D.O. |
| Shital Patel, D.O. | James Carty, D.O. |

The Executive Director recommended that since the renewals of the above doctors were complete, although received just after the deadline, the renewals be accepted. Dr. Steinway moved that the licenses held by the above doctors be renewed and no further action be taken in this matter. Dr. Brysacz seconded. The motion passed, 5-1.

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| Robert Marouk, D.O. | Richard Waldrop, D.O. |
| Alphonse Ambrosia, D.O. | Paul Blackburn, D.O. |
| Mary Morehouse, D.O. | Christine Bowers, D.O. |

The Executive Director recommended that the since the doctors listed above had filed their applications and paid the renewal fees, the Board accept their renewals but direct that complaints be opened against the doctors for failing to complete and/ or document completion of the required number of CME hours. Dr. Steinway so moved. Dr. Wedel seconded. The motion passed, 6-0.

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| John Taylor, D.O. | Herbert Oye, D.O. |
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As staff had not received application or payment from the above doctors by the time of the meeting, these cases were not discussed.

XV. ADJOURNMENT

There being no further business on the agenda, the Board adjourned at 4:55 p.m.

Draft date: May 10, 2004
Approved: June 19, 2004